

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1304 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKBHAI BAJIRAO VASAVA

Versus

DISTRICT MAGISTRATE

Appearance:

MR VH PATEL for HL PATEL ADVOCATES for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 19th November, 1998, made by the District Magistrate, Bharuch, under the powers conferred upon him

under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of public order. As many as five offences punishable under the Bombay Prohibition Act are registered against the petitioner and are pending investigation. Besides, four persons, on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner and its adverse effect on public tranquility and even tempo of life.

Amongst the other grounds, Mr. Patel has also contended that the impugned order of detention has been made long after the evidence was collected against the petitioner. The said delay in making the order has not been explained by the Detaining Authority and such unexplained delay should be fatal to the order of detention. It appears that the offences have been registered against the petitioner for the period during 3rd December, 1996 to 27th July 1998. After registration of the last of the offences, the statements of the witnesses have been recorded on 27th August, 1998 and were also verified on 3rd September, 1998. A further verification was made by the Detaining Authority on 16th November, 1998 and the order has been made on 19th November, 1998. Thus, it is apparent that though the evidence was collected as far back as on 27th August, 1998, no action was taken till 15th November, 1998 the date on which the Detaining Authority summoned the witnesses for personal verification. The aforesaid delay has not been explained by the Detaining Authority. In view of the prevailing judicial pronouncements, such unexplained delay would vitiate subjective satisfaction recorded by the Detaining Authority and the continued detention of the petitioner is unwarranted.

Petition is, therefore, allowed. The order dated 19th November, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI